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Rick Braumoeller

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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC

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SUITE 5400

SEATTLE, WA 98104

EXAMINER

PLUCINSKI, JAMISUE A

ART UNIT

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3629

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/965,121	Applicant(s) BRAUMOELLER ET AL.	
	Examiner JAMISUE A. PLUCINSKI	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,7-11,13-19,32-57,59-74,77 and 79-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,7-11,13-19,32-57,59-74,77 and 79-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. Claims 1, 7-11, 13-19, 32-53 and 77 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
2. The first step in determining whether a claim recites patent eligible subject matter is to determine whether the claim falls within one of the four statutory categories of invention recited in 35 USC 101: process, machine, manufacture and composition of matter. The latter three categories define "things" or "products", while a "process" consists of a series of steps or acts to be performed.
3. In Claims 1, 7-11, 13-19 and 32-53, the claims are drawn to a method. For purposes of 101, a "process" has been given a specialized, limited meaning by the courts. Based on *In re Bilski* (Federal Circuit 2007-1130), the court outlined a test used to determine whether a method satisfies 35 USC 101, is a machine-or-transformation test. *In re Bilski* states "the machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. See *Benson*, 409 U.S. at 70. Certain considerations are applicable to analysis under either branch. First as illustrated by *Benson* and discussed below, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. See *Benson*, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. See *Flook*, 437 US at 590. Claims 1, 7-11, 13-19 and 32-53 are drawn to a method for

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a computer system, and discloses the method being done under control of the computer system, however does not positively disclose that the computer system actually performs the method steps. A person sitting a computer being told what to do, can still perform the method. The term "Automatically" does not positively state that the step is being done by a computer as well. Due to the fact that a computer is not positively recited as performing the significant steps in the body of the claim, it lends itself to being insignificant extra-solution activity due to the fact that a particular machine is not recited in the claims as doing any of the steps, and therefore the claims do not pass the machine-or-transformation test and are hence not directed to statutory subject matter.

4. In Claim 77, the claim recites "a computer readable medium containing a data structure for use in...". The claim fails to meet the IEEE definition of a data structure, therefore the claim is directed to a medium with a collection of data. When non-functional descriptive material is recorded on some computer readable medium, it is not considered to be statutory due to the fact that no requisite functionality is presented to satisfy the practical application requirement. See MPEP 2106.01.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1, 7-15, 63-74, 77 and 79-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmax (www.carmax.com) in view of Bilibin et al. (US 2005/0197892) and Cruz et al. (7,546,255).

8. With respect to Claim 1, 63, 67, 72, 73, 74, 77, 81, 82: Carmax discloses the use of a method and system for providing multiple fulfillment plans for an item (See Page 2) comprising:

- a. Before receiving from a customer of the item ordering service a request to obtain information about an ordering process for one or more items (this is done while searching (see Page 9);
- b. Automatically determining multiple geographically distributed item distribution centers that are maintained by the item ordering service and that are each available as an alternative to supply the items (Page 2, Paragraph 3);
- c. Automatically determining multiple distinct alternative fulfillment plans for supplying the items to the customer that are each associated with one of the determined item distribution centers such that each of the determined item distribution centers has at least one associated fulfillment plan, each fulfillment plan indication that the item are to

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be shipped from the item distribution center associated with the fulfillment plan and indicating a manner of shipping the items from the associated item distribution center to the customer and indicating information about processing that would take place at the associated item distribution center as part of the fulfillment plan to prepare the items for the shipping to the customer (See Page 3, Transfer of Cars)

- d. For multiple determined distinct fulfillment plans
 - i. Determine a cost of use for that fulfillment plan if the items are supplied using that fulfillment plan (Page 8);
 - ii. Determining delivery information for that fulfillment plan on which the customer will receive the items if the items are supplied using that fulfillment plan, the determined delivery information being based at least in part on the indicated manner of shipping the items for that fulfillment plan and being based at least in part on the indicated information about the processing that would take place at the associated item distribution center for that fulfillment plan (See Page 8).
- e. Providing to the customer an indication of each of the multiple of the determined fulfillment plans as options for supplying the items to the customer, each indication of a determined fulfillment plan option including the determined cost of use and the determined actual delivery date of that determined fulfillment plan option (see Page 9 and Page 2, Paragraph 3, CarMax returns the car that is searched at the location of choice, as well as the car that is in inventory at other surrounding stores and displays all results for the user to purchase, and for the user to transfer even before purchasing the car)

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- f. After an indication from the customer to use a selected one of the indicated determined fulfillment plan options as part of an order for the items, indicating to place the order for the items using the selected fulfillment plan so that the customer will receive options for how an order is to be fulfilled one will receive accurate delivery date information for the order prior to the order placement (See Page 7, shopping online).
9. CarMax discloses the use of providing a table of delivery information and how long it takes for delivery, however fails to disclose specifically determining an actual delivery date, and providing the actual delivery date to the customer. Bilibin discloses a method and system for shipping an item, where the actual delivery date is determined and provided to the customer with the multiple fulfillment plans (See Figure 36A with corresponding detailed description). Carmax discloses a database which can be used to determine an actual delivery date, Bilibin discloses a database/ rate structure which IS used to calculate an actual delivery date. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the technique of determining the actual delivery date of Bilibin to the system of Carmas, for the predictable result of giving the customer as much information as possible to make an informed decision. (See KSR [127 S Ct. at 1739] “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).
10. Carmax discloses determining the amount of time it takes for delivery, and Bilibin discloses the use of calculating a delivery date. It is obvious to one of ordinary skill in the art, when calculating delivery dates that processing times are involved, however Carmax and Bilibin fail to specifically disclose this. Cruz discloses when calculating delivery date all intermediate states of production including inventory are taking into account (Column 15, line 58 to Column

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16, line 13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include processing time in the delivery date an order, in order to correctly and accurately determine the delivery date of an order. (See Cruz, Columns 15 and 16).

11. With respect to Claim 7, 65 and 84: CarMax discloses everything is done over a website (www.carmax.com).

12. With respect to Claim 8: CarMax discloses the transferring of vehicles, therefore the examiner considers this to be describing how it will be performed.

13. With respect to Claims 9-11 and 68: CarMax discloses the search being done from one location (See Figure 9), which the examiner considers this to be the default setting and the preferred location.

14. With respect to Claim 13: CarMax discloses the amount of time it takes to transfer the item (Page 8), Bilibin discloses determining an actually delivery date (Paragraph 0218 and 0221).

15. With respect to Claim 14: CarMax discloses the use of a transfer cost (See Page 8) snf Bilibin discloses the determining of the cost of use for a fulfillment plan includes:

g. modeling at least some future costs of supplying expected future orders to recipients if the indicated items are supplied to the recipient using the fulfillment plan (Paragraph 0287 shipping cost, the examiner considers them to be future cost, cause the item has not been purchased yet);

h. determining at least some of multiple costs that are directly attributable to using the fulfillment plan to supply the items to the recipient (Paragraph 0287);

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- i. assigning costs to at least some of one or more reductions in customer goodwill that result from using the fulfillment plan to supply the items to the recipient (Paragraph 0295, see discounts); and
 - j. totaling the modeled future costs, the determined directly attributable costs, and the assigned customer goodwill reduction costs (Paragraph 0295).
16. With respect to Claim 64: CarMax discloses after searching the car can be transferred or purchased online (Pages 3 and 7). The examiner considers this to be a “potential order”.
17. With respect to Claims 66 and 83: CarMax discloses that a search is done, and from the results a car can be selected, the examiner considers this to be presenting a control to the customer (See Page 2).
18. With respect to Claims 69 and 70: CarMax discloses part of the purchase can be done online, and then you visit a store to pick up your vehicle and complete the paperwork. Therefore at that time, information on the order is provided before the provisional date. (See Page 7).
19. With respect to Claim 71 and 80: See CarMax, Page 8.
20. With respect to Claim 79: Bilibin discloses a time associated with the delivery date (See Figure 36A).
21. With respect to Claim 85: See Bilibin Figure 36A.
22. With respect to Claim 86: Bilibin discloses the medium is data transmission of a data signal (Paragraph 0173).
23. With respect to Claim 87: Bilibin discloses the medium is memory in a computer device (Paragraph 0122).

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24. With respect to Claims 15: CarMax and Bilibin disclose the use of fulfillment plans, however fail to disclose the fulfillment plans including processing lanes. However, the information in the fulfillment plan including processing lanes is deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The steps of providing the delivery fulfillment plans and indicating the fulfillment plans, would be performed the same regardless of whether the plans included the processing lanes due to the fact that no further steps use the information on the processing lanes for any other reason. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

25. Claims 16-19 and 32-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carmax, in view of Bilibin, Cruz and Nicholls et al. (5,631,827)

26. With respect to Claims 16, 35, 46, 49, 52-55, 58, 59 and 62: Carmax discloses the use of a method and system for providing multiple fulfillment plans for an item (See Page 2) comprising:

k. Before receiving from a customer of the item ordering service a request to obtain information about an ordering process for one or more items (this is done while searching (see Page 9);

l. Automatically determining multiple geographically distributed item distribution centers that are maintained by the item ordering service and that are each available as an alternative to supply the items (Page 2, Paragraph 3);

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- m. Automatically determining multiple distinct alternative fulfillment plans for supplying the items to the customer that are each associated with one of the determined item distribution centers such that each of the determined item distribution centers has at least one associated fulfillment plan, each fulfillment plan indicating that the item are to be shipped from the item distribution center associated with the fulfillment plan and indicating a manner of shipping the items from the associated item distribution center to the customer and indicating information about processing that would take place at the associated item distribution center as part of the fulfillment plan to prepare the items for the shipping to the customer (See Page 3, Transfer of Cars)
- n. For multiple determined distinct fulfillment plans
 - iii. Determine a cost of use for that fulfillment plan if the items are supplied using that fulfillment plan (Page 8);
 - iv. Determining delivery information for that fulfillment plan on which the customer will receive the items if the items are supplied using that fulfillment plan, the determined delivery information being based at least in part on the indicated manner of shipping the items for that fulfillment plan and being based at least in part on the indicated information about the processing that would take place at the associated item distribution center for that fulfillment plan (See Page 8).
- o. Providing to the customer an indication of each of the multiple of the determined fulfillment plans as options for supplying the items to the customer, each indication of a determined fulfillment plan option including the determined cost of use and the

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determined actual delivery date of that determined fulfillment plan option (see Page 9 and Page 2, Paragraph 3, CarMax returns the car that is searched at the location of choice, as well as the car that is in inventory at other surrounding stores and displays all results for the user to purchase, and for the user to transfer even before purchasing the car)

p. After an indication from the customer to use a selected one of the indicated determined fulfillment plan options as part of an order for the items, indicating to place the order for the items using the selected fulfillment plan so that the customer will receive options for how an order is to be fulfilled one will receive accurate delivery date information for the order prior to the order placement (See Page 7, shopping online).

27. CarMax discloses the use of providing a table of delivery information and how long it takes for delivery, however fails to disclose specifically determining an actual delivery date, and providing the actual delivery date to the customer. Bilibin discloses a method and system for shipping an item, where the actual delivery date is determined and provided to the customer with the multiple fulfillment plans (See Figure 36A with corresponding detailed description). Carmax discloses a database which can be used to determine an actual delivery date, Bilibin discloses a database/ rate structure which IS used to calculate an actual delivery date. It would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the technique of determining the actual delivery date of Bilibin to the system of Carmax, for the predictable result of giving the customer as much information as possible to make an informed decision. (See KSR [127 S Ct. at 1739] “The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

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28. Carmax discloses determining the amount of time it takes for delivery, and Bilibin discloses the use of calculating a delivery date. It is obvious to one of ordinary skill in the art, when calculating delivery dates that processing times are involved, however Carmax and Bilibin fail to specifically disclose this. Cruz discloses when calculating delivery date all intermediate states of production including inventory are taking into account (Column 15, line 58 to Column 16, line 13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include processing time in the delivery date an order, in order to correctly and accurately determine the delivery date of an order. (See Cruz, Columns 15 and 16).

29. CarMax discloses providing a listing of the fulfillment plans, however fails to disclose selecting one of the fulfillment plans, at least based on cost and provide the information to the customer about the selected one. Nicholls discloses the use of a rater server for calculating shipments of package, where package specifications are entered, and multiple fulfillment plans for the shipment are calculated and the system automatically chooses one option based on the "Best Way" (See Column 7, lines 48-67. It would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Carmax and Bilibin to have an automatic selection of a fulfillment plan, for efficiency purposes, and to alleviate the need for a user to make the decision (See Nicholls, abstract and columns 7 and 8). (See KSR [127 S Ct. at 1739] "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.").

30. With respect to Claims 17 and 18: CarMax discloses after searching the car can be transferred or purchased online (Pages 3 and 7). The examiner considers this to be a "potential order" and are done to initiate an order.

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31. With respect to Claims 19 and 34: See www.carmax.com.
32. With respect Claims 32, 33, 36, 44 and 61: See Bilibin, Figure 36A with corresponding detailed description.
33. With respect to Claims 37-41: CarMax discloses the use of a transfer cost (See Page 8) and Bilibin discloses the determining of the cost of use for a fulfillment plan includes:
 - q. modeling at least some future costs of supplying expected future orders to recipients if the indicated items are supplied to the recipient using the fulfillment plan (Paragraph 0287 shipping cost, the examiner considers them to be future cost, cause the item has not been purchased yet);
 - r. determining at least some of multiple costs that are directly attributable to using the fulfillment plan to supply the items to the recipient (Paragraph 0287);
 - s. assigning costs to at least some of one or more reductions in customer goodwill that result from using the fulfillment plan to supply the items to the recipient (Paragraph 0295, see discounts); and
 - t. totaling the modeled future costs, the determined directly attributable costs, and the assigned customer goodwill reduction costs (Paragraph 0295).
34. With respect to Claim 42: CarMax discloses that a search is done, and from the results a car can be selected, the examiner considers this to be presenting a control to the customer (See Page 2).
35. With respect to Claim 43: Bilibin discloses the use of fulfillment plans, however fail to disclose the fulfillment plans including processing lanes. However, the information in the fulfillment plan including processing lanes is deemed to be nonfunctional descriptive material

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and is not functionally involved in the steps recited. The steps of providing the delivery fulfillment plans and indicating the fulfillment plans, would be performed the same regardless of whether the plans included the processing lanes due to the fact that no further steps use the information on the processing lanes for any other reason. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

36. With respect to Claim 45: Bilibin discloses the use of an indication of priority of the items (Paragraph 0456).

37. With respect to Claims 47 and 48: Carmax discloses the use of ordering online (See Page 7) and discloses the transferring location being the default search location, used to search the inventory (Page 9).

38. With respect to Claim 50: See CarMax, Page 8.

39. With respect to Claim 51: See CarMax Page 6.

40. With respect to Claims 56 and 60: Bilibin discloses the medium is memory in a computer device (Paragraph 0122).

41. With respect to Claim 57: Bilibin discloses the medium is data transmission of a data signal (Paragraph 0173).

Response to Arguments

42. Applicant's arguments with respect to claims 16-19, and 32-62 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMISUE A. PLUCINSKI whose telephone number is (571)272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jamisue A. Plucinski/
Primary Examiner, Art Unit 3629